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**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

Date Introduced:	<b>02/19/99</b>	Bill No:	<b>AB 563</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Honda, et al.</b>
Board Position:		Related Bills:	

**BILL SUMMARY:**

This bill would exclude from the terms “sale” and “purchase” any transfer by a city, city and county, county, or other local government animal shelter or nonprofit animal welfare organization of any animal to an individual for use as a pet, and any charges for services in connection with that transfer.

**ANALYSIS:**

Current Law:

Under existing law, all sales of tangible personal property are subject to tax, unless specifically exempted by law. Under the law, the transfer of title of tangible personal property constitutes a “sale.” In addition, all charges for services in connection with the sale of tangible personal property are includable in the measure of tax, unless specifically exempted or excluded by law. The Sales and Use Tax Law provides no general statutory exemptions from the sales or use tax merely because the seller is engaged in charitable activities, is a nonprofit organization, or enjoys certain privileges under property tax statutes or income tax statutes.

Animal shelters and humane societies generally provide pet adoption services for a fee. Fees typically consist of an adoption fee, plus fees for a wide range of services including spay/neuter surgery, vaccinations, de-worming, disease testing, obedience training, health exams, and microchip implants. These fees may be separately stated or charged as a lump sum adoption amount. While some services might be optional to the purchaser, most shelters require that certain services be performed prior to the animal being transferred to the new owner. Shelters are generally required by county ordinance to provide only healthy animals that are spayed or neutered (or to collect a fee for the future spaying or neutering if the animal is too young).

Under the Sales and Use Tax Law, the transfer of title of animals to purchasers for a consideration constitutes a “sale.” The fact that the amount received for the animal is designated “minimum donation,” “adoption fee,” or “placement fee” is irrelevant. The amount constitutes the consideration paid for the transfer of title or possession of tangible personal property. In addition, any fees which a humane society requires to be paid before the animal is released to the new owner are subject to tax. However, charges for optional services are not subject to tax.

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Proposed Law:

This bill would add Section 6010.40 to the Sales and Use Tax Law to exclude from the terms “sale” and “purchase” the transfer by a city, city and county, county, or other local government animal shelter or nonprofit animal welfare organization of any animal to an individual for use as a pet, or any charges made by the government shelter or nonprofit organization for services in connection with the transfer of that animal, including, but not limited to, the spaying or neutering or future spaying or neutering of the animal, or any vaccination, future vaccination, or similar service.

The bill would define “nonprofit animal welfare organization” as an organization that is formed and operated for the primary purpose of prevention of abuse, neglect, or exploitation of animals, and that qualifies for an exemption from income tax pursuant to Section 23701(d) of the Revenue and Taxation Code.

The bill would become effective immediately upon enactment, but would become operative on the first day of the calendar quarter commencing more than 90 days from the bill’s effective date.

Background:

A similar measure was considered during the 1997-98 Legislative Session. That measure, AB 68 (V. Brown, et al.), which was sponsored by the Board, was held in the Senate Revenue and Taxation Committee.

**COMMENTS:**

1. **Sponsor and purpose of the bill.** According to the author’s office, this bill is co-sponsored by the Humane Society of the United States and the California Agricultural Commissioners and Sealers Association in an effort to eliminate the sales tax imposed upon pet adoptions and related services performed by nonprofit humane societies and animal shelters. The sponsors believe that these organizations are providing a worthwhile service in finding homes for pets, and the adoption fees should not be increased through the application of sales tax.
2. **The majority of these societies have not been reporting sales tax properly.** In surveying a number of humane societies and animal shelters, the Board has noted that these organizations have been confused with respect to their tax reporting obligations. Some shelters have reported taxes on all the fees they have collected, some have only reported tax on the adoption fees, and some have failed to report any taxes under the belief that they are providing exempt placement services. Enactment of this measure would resolve these organizations’ apparent confusion with respect to their tax reporting obligations.
3. **Bill would not likely create a competitive disadvantage for retail pet shops and breeders.** When considering sales tax exemptions for nonprofit organizations, consideration is sometimes given to the impact the exemption would have on for-profit retailers selling similar property. Some argue that an exemption for nonprofit organizations, such as the exemption this bill is proposing, places for-profit organizations selling similar property at a competitive disadvantage, since they remain liable for the sales tax on their sales. However, most would concede that

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the application of sales tax on pet acquisitions would not be a determining factor in choosing a pet from a humane society or shelter over one offered at a pet shop or breeder. Often, pets are adopted through animal shelters solely for humanitarian reasons (it is interesting to note that a total of 276,789 dogs and 285,720 cats were actually euthanized in California shelters during 1996 as compared to adoptions of 95,947 dogs and 68,283 cats that same year).

4. **Humane societies would be regarded as “consumers” of property used in connection with their services.** The effect of this measure is that the humane societies would no longer be required to hold sellers’ permits or report tax on their transfers of animals, unless the transfer is made for a consideration to someone other than an individual for use as a pet. With respect to animals transferred to individuals for use as a pet, the humane society would be regarded as a consumer of any animal feed, medicines or other property used in the course of caring for that animal. As a consumer, the humane society would be required to pay tax on its cost of dog food, cat food, kitty litter, medicines, and any other items used in the course of their services.

#### **COST ESTIMATE:**

The Board would incur some minor costs in notifying animal shelters of the provisions of the bill. These costs would be absorbable.

#### **REVENUE ESTIMATE:**

According to 1996 data maintained by the Veterinary Public Health Section of the California Department of Health Services, a total of 164,230 animals (95,947 dogs and 68,283 cats) were adopted statewide in 1996. The average adoption fee per animal amounts to \$25.

If these entities had been reporting their tax obligations correctly, the annual combined state and local revenue loss associated with this measure would be \$325,175 (164,230 x \$25 x 7.92%). However, many of these entities are not currently registered with the Board, and are therefore not currently reporting tax on these transactions. Based on a random sampling of these organizations, it is estimated that about 40 percent are reporting their tax obligations correctly. Applying this percentage to the \$325,175 total estimate of transactions, the annual combined state and local revenue loss would amount to \$130,070.

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